



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

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**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
ATAK WB INVESTORS, LLC
FOR
CHRYSLER PROPERTY
VWPP Permit No. 15-1572**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Attack WB Investors, LLC regarding the Chrysler Property, for the purpose of resolving certain violations of State Water Control Law and the applicable permit and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Attack WB Investors, LLC" is a limited liability company authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. Attack WB Investors, LLC is a "person" within the meaning of Va. Code § 62.1-44.3
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

5. "Discharge" means, when used without qualification, a discharge of a pollutant, or any addition of a pollutant or combination of pollutants, to state waters or waters of the contiguous zone or ocean other than a discharge from a vessel or other floating craft when being used as a means of transportation.
6. "Fill Material" means any pollutant which replaces portions of surface water with dry land or which changes the bottom elevation of a surface water for any purpose. 9 VAC 25-210-10.
7. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
8. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
9. "Permit" or "Virginia Water Protection Permit" means an individual or general permit issued under Va. Code § 62.1-44.15:20 that authorizes activities otherwise unlawful under Va. Code § 62.1-44.5 or otherwise serves as the Commonwealth's certification under § 401 of the federal Clean Water Act (33 United States Code ("USC") § 1344.
10. "Pollutant" means any substance, radioactive material, or heat which causes or contributes to, or may cause or contribute to pollution. 9 VAC 25-210-10.
11. "Pollution" means such alteration of the physical, chemical or biological properties of any state waters as will or is likely to create a nuisance or render such waters: (i) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (ii) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (iii) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses; provided that (a) an alteration of the physical, chemical, or biological property of state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of or discharge or deposit to state waters by other owners is sufficient to cause pollution; (b) the discharge of untreated sewage by any owner into state waters; and (c) contributing to the contravention of standards of water quality duly established by the board, are "pollution." Va. Code § 62.1-44.3; 9 VAC 25-210-10.
12. "Property" or "Parcel" means the tract of land at 12400 W. Broad Street, Henrico County, Virginia..
13. "Regulations" means the Virginia Water Protection Permit Program Regulations, 9 VAC 25-210 *et seq.*
14. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 2.2 (Va. Code §§ 62.1-44.15:20 through 62.1-44.15:23) of the State Water Control Law addresses the Virginia Water Resources and Wetlands Protection Program.

15. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3 and 9 VAC 25-210-10.
16. "Surface water" means all state waters that are not ground waters as defined in Va. Code § 62.1-255.
17. "Va. Code" means the Code of Virginia (1950), as amended.
18. "VAC" means the Virginia Administrative Code.
19. "Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. 9 VAC 25-210-10.
20. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

SECTION C: Findings of Fact and Conclusions of Law

1. On 12/09/2013, DEQ issued VWP General Permit Number WP4 (WP4-13-0933).
2. On 1/9/2015, DEQ inspected the property in response to a report from Attack WB Investors, LLC of unpermitted impacts to wetlands and streams on the Property. DEQ observed that clearing, grading and the discharge of fill material had occurred to 0.11 acre of palustrine forested wetlands, 41 LF of intermittent stream channel, and 102 linear feet of ephemeral stream channel. These impacts resulted from installation of the Western Area Trunk Sewer line, and were not authorized by WP4-13-0933 or any other VWP permit.
3. 9 VAC 25-210-50(A) and Va. Code §62.1-44.15:20(A) states that except in compliance with a VWP permit, no person shall dredge, fill, or discharge any pollutant into, or adjacent to surface waters.
4. On 2/13/2015, DEQ issued Warning Letter No. 15-02-PRO-702 for the observations in (C)(2).
5. On 6/11/2015, the permittee submitted a report informing DEQ that the unpermitted impacts referenced in the 2/13/2015 warning letter were restored to original contours and the wetlands were reseeded with a native seed mix.

6. On 10/12/2015, DEQ inspected the property and observed the following:
 - a. Failure to maintain erosion and sediment controls
 - b. Unauthorized discharged of sediment occurred into 200 sq. ft. of state waters
 - c. Temporary impacts were not restored within 30 days
7. 9 VAC 25-690-100(B)(5) requires that erosion and sedimentation controls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook and shall remain in place until the area is stabilized.
8. 9VAC25-690-100(B)(11) requires that all temporarily disturbed wetland areas shall be restored to preexisting conditions within 30 days of completing work at each respective temporary impact area.
9. 9 VAC 25-690-100(A) requires that any changes to the authorized temporary impacts to surface waters shall require written notification to and approval from the Department of Environmental Quality in accordance with 9VAC25-690-80 prior to initiating the impacts.
10. On 12/31/2015, DEQ inspected the property and observed the following:
 - a. No corrective action had occurred
 - b. Unauthorized discharged of sediment occurred into 600 sq. ft. of state waters
11. On 02/11/2016, DEQ issued a Notice of Violation (NOV No. 16-02-PRO-701) for the observations made in paragraph (C)(2), (C)(6), and (C)(10).
12. On 04/12/2016, at the request of Attack WB Investors, LLC, DEQ terminated the General Permit (WP4-13-0933) and issued an Individual Permit (Permit No. 15-1572) due to the addition of impact areas beyond the thresholds of the VWP WP4 General Permit.
13. On 09/16/2016, Attack WB Investors, LLC submitted photos documenting that the impact areas had been fully restored.
14. On 10/05/2016, DEQ inspected the property and observed the following:
 - a. Failure to maintain erosion and sediment controls;
 - b. Unauthorized discharged of sediment occurred into 0.10 acres of wetlands;
 - c. A 61 LF stream segment had been secondarily impacted by the removal and diversion of hydrology.
15. VWP Permit 15-1572, Special Condition (G)(24) requires that erosion and sedimentation controls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook and shall remain in place until the area is stabilized.

16. 9 VAC 25-210-50(A) and Va. Code §62.1-44.15:20(A) states that except in compliance with a VWP permit, no person shall dredge, fill, or discharge any pollutant into, or adjacent to surface waters.
17. On 10/31/2016, DEQ issued a Notice of Violation (NOV No. 1610-000015) for the observations made in paragraph (C)(14).
18. On 11/08/2016, Attack WB Investors, LLC submitted a response to the NOV. Attack WB Investors, LLC stated that portion of the property in question was sold to WB APT Land LC on September 25, 2014. The erosion and sediment control violations that resulted in unauthorized impacts to 0.10 acres of wetlands was the result of land disturbance activities conducted by WB APT Land LC. Attack WB Investors, LLC has no operational control of the property or relationship with WB APT Land LC.
19. Based on the results of the inspections that occurred on 10/12/2015, 12/31/2015, 10/05/2016 the Board concludes that Attack WB Investors, LLC has violated 9 VAC 25-690-100(B)(5) and (B)(11), 9 VAC 25-690-100(A), VWP Permit 15-1572, Special Condition (G)(24), 9 VAC 25-210-50(A) and Va. Code §62.1-44.15:20(A) as described in paragraphs above.
20. In order for Attack WB Investors, LLC to return to compliance, DEQ staff and representatives of Attack WB Investors, LLC have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code § 62.1-44.15, the Board orders, and Attack WB Investors, LLC agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$3,412.50 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Attack WB Investors, LLC shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Attack WB Investors, LLC shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent Attack WB Investors, LLC for good cause shown Attack WB Investors, LLC, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No.16-02-PRO-701 dated 02/11/2016 and NOV No. 1610-000015 dated 10/31/2016. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Attack WB Investors, LLC admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Attack WB Investors, LLC consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Attack WB Investors, LLC declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Attack WB Investors, LLC to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Attack WB Investors, LLC shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Attack WB Investors, LLC shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Attack WB Investors, LLC shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay

compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Attack WB Investors, LLC. Nevertheless, Attack WB Investors, LLC agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Attack WB Investors, LLC has completed all of the requirements of the Order;
 - b. Attack WB Investors, LLC petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Attack WB Investors, LLC.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Attack WB Investors, LLC from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted Attack WB Investors, LLC and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.

13. The undersigned representative of Attack WB Investors, LLC certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Attack WB Investors, LLC to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Attack WB Investors, LLC.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Attack WB Investors, LLC voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2017.

Jefferson Reynolds

Director of Enforcement

Department of Environmental Quality

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Attack WB Investors, LLC voluntarily agrees to the issuance of this Order.

Date: 7/15/17 By: C. Weinstock, President, Attack Properties, Inc.
(Person) (Title)
Attack WB Investors, LLC

Commonwealth of Virginia

City/County of Henrico

The foregoing document was signed and acknowledged before me this 15th day of
July, 2017, by Cindy Weinstock, President of Attack who is
Manager Properties, Inc. of Attack WB Investors, LLC on behalf of the company.

Frances Belkin Shahan
Notary Public

7255404

Registration No.

My commission expires: 4/30/2021

Notary seal:

Commonwealth Of Virginia
Frances Belkin Shahan - Notary Public
Commission No. 7255404
My Commission Expires 4/30/2021

APPENDIX A
SCHEDULE OF COMPLIANCE

Atack WB Investors, LLC shall

1. Immediately cease impacts to state waters and shall not resume such impacts unless authorization from DEQ is authorized via a Permit.
2. No later than 30 days after the effective date of the Order, submit proof of purchase of 56 stream credits from a DEQ-approved mitigation bank or in-lieu fee fund that is authorized and approved by DEQ to sell credits in the area in which the impacts occurred and has credits available (as released by DEQ) to achieve no-net-loss of function in all surface waters in accordance with 9 VAC 25-210-116.
3. Unless otherwise specified in this Order, Atack WB Investors, LLC shall submit all requirements of Appendix A of this Order to:

Piedmont Regional Office
Allison Dunaway
VWP Program Manager

Allison.dunaway@DEQ.Virginia.Gov

and

PRO.VWPCompliance@DEQ.Virginia.Gov

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